

FLORENCE WILSON
Claimant

BOEING MILITARY AIRPLANES

Respondent

AETNA CASUALTY & SURETY
Insurance Carrier

WORKERS COMPENSATION FUND

ORDER

APPEARANCES

RECORD

STIPULATIONS

ISSUES

By Order dated December 21, 1994, the Administrative Law Judge modified an earlier Award entered in this proceeding dated August 5, 1994. The Workers Compensation Fund appealed that Order to the Appeals Board and this Board remanded the proceeding to the Administrative Law Judge and requested the Judge to designate whether the December 1994 Order was intended to correct a clerical error or whether it adjudicated issues not addressed in the initial Award. Upon remand, the Administrative Law Judge issued an Order Nunc Pro Tunc dated April 18, 1995. The Workers Compensation Fund requested review of that Order and raises the following issues:

- (1) Whether the Court correctly accounted for 87 weeks of temporary total disability benefits paid during vocational rehabilitation;
- (2) Whether the Administrative Law Judge used the proper date of accident in the initial Award and subsequent Orders; and,
- (3) Whether the Administrative Law Judge erred by assessing liability against the Workers Compensation Fund in the subsequent Orders when no assessment was made in the original Award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

- (1) All acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge shall be subject to review by the Appeals Board upon timely written request of any interested party. See K.S.A. 44-551, as amended by S.B. 59 (1995).

The Administrative Law Judge initially entered an Award in this proceeding on August 5, 1994, and ordered payment of 18.43 weeks of temporary total disability benefits at \$289.00 per week and 396.57 weeks of permanent partial disability benefits at \$168.09 per week. The Award did not mention 87 weeks of temporary total the respondent paid during a vocational rehabilitation program. The parties advised the Administrative Law Judge she had omitted addressing the 87 weeks of temporary total benefits that had been paid during vocational rehabilitation, and the Judge subsequently entered an Order dated December 21, 1994, wherein she again ordered payment of 18.43 weeks of temporary total and 396.57 weeks of permanent partial disability benefits as contained in the initial Award. In this subsequent Order, the Administrative Law Judge provided that respondent was entitled credit for payment of 18.43 weeks of temporary total disability at the rate of \$289.00 per week and 87 weeks of benefits at the rate of \$168.09 per week. In this Order of December 21, 1994, the Administrative Law Judge also ordered the Workers Compensation Fund to reimburse respondent the sum of \$8,953.17 which represented the difference between the permanent partial and temporary total disability rates for a period of 87 weeks.

As indicated above, the Appeals Board remanded the proceeding to the Administrative Law Judge to designate whether the December 1994 Order was intended to correct a clerical error only or whether it addressed other issues. Upon remand, the Administrative Law Judge indicated the December 1994 Order was intended to correct clerical errors only, and the Administrative Law Judge issued an Order Nunc Pro Tunc dated April 18, 1995, that was identical to the earlier December 1994 Order except for its title. After reviewing this matter, the Appeals Board finds that the Administrative Law Judge intended to correct a clerical error and, therefore, the 87 weeks of temporary total disability benefits that were omitted from the original Award should have been included in the computation of the total number of weeks of temporary total disability benefits that claimant was entitled to receive. Further, the respondent and insurance carrier are entitled

to a credit for the amount of compensation paid prior to the date of award as provided by K.S.A. 44-525(b) (Ensley).

Respondent's suggestion that the Administrative Law Judge found either the vocational rehabilitation plan, or payment of temporary total disability benefits during that plan, to be or to have been inappropriate is neither supported by the findings in the Award or the colloquy contained in the transcripts in the two meetings with the Administrative Law Judge held after issuance of the Award. Also, the propriety of the vocational rehabilitation plan, or payment of temporary total associated with that plan, was not made an issue for the Administrative Law Judge to consider at the time of the initial Award.

(2) The second issue raised by the Workers Compensation Fund is whether the Administrative Law Judge found the correct date of accident for claimant's upper extremity injuries. Because date of accident was a finding in the initial Award and the Award was not appealed, that finding became final and may not now be reviewed.

(3) Because of the above findings, the remaining issue raised by the Workers Compensation Fund is rendered moot.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered in this proceeding on August 5, 1994, and subsequent orders entered on December 21, 1994, and April 18, 1995, should be, and hereby are, corrected and modified as follows:

WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Florence Wilson, and against the respondent, The Boeing Company, and the insurance carrier, Aetna Casualty & Surety, for an accidental injury sustained on February 24, 1992, for a 39% permanent partial disability.

The claimant is entitled to 105.43 weeks temporary total disability at the rate of \$289.00 per week or \$30,469.27 and 309.57 weeks of permanent partial disability compensation at \$168.09 per week or \$52,035.62 for a total award of \$82,504.89.

As of September 29, 1995, there is due and owing claimant 105.43 weeks of temporary total disability compensation at the rate of \$289.00 per week or \$30,469.27, followed by 82 weeks of permanent partial disability compensation at the rate of \$168.09 per week in the sum of \$13,783.38, for a total of \$44,252.65 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$38,252.24 is to be paid for 227.57 weeks at the rate of \$168.09 per week, until fully paid or further order of the Director.

The Workers Compensation Fund is responsible for the temporary total disability payments and the medical treatment to the upper extremities provided to claimant after her return to work in August 1990. However, the Fund is not liable for any portion of the work disability awarded in this proceeding.

The Appeals Board hereby adopts the remaining orders of the Administrative Law Judge as contained in the Award of August 5, 1994, that are not inconsistent with the orders expressly made herein.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Thomas E. Hammond, Wichita, Kansas
Frederick L. Haag, Wichita, Kansas
John C. Nodgaard, Wichita, Kansas
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director